

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DAVID S. CHANEY
Chief Assistant Attorney General
3 FRANCES T. GRUNDER
Senior Assistant Attorney General
4 ALVIN GITTISRIBOONGUL
Supervising Deputy Attorney General
5 JAMES M. SOBOLEWSKI, State Bar No. 99559
Deputy Attorney General
6 1300 I Street, Suite 125
P.O. Box 944255
7 Sacramento, CA 94244-2550
Telephone: (916) 327-6758
8 Fax: (916) 324-5205
Email: James.Sobolewski@doj.ca.gov
9

10 Attorneys for Defendants Martel, Willey, Knowles,
Goughnour, Walker, Vance, and Pliler
11

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION
15

16 **GREGORY LYNN NORWOOD,**

17 Plaintiff,

18 v.

19 **EDWARD ALAMEIDA, JR., et al.,**

20 Defendants.
21

2:03-cv-2554 GEB GGH P

DEFENDANTS' PROPOSED JURY INSTRUCTIONS

Trial Date: October 30, 2007
Time: 9:00 a.m.
Courtroom: No. 10 - 13th Floor
Judge: The Honorable
Garland E. Burrell, Jr.

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Defendants Martel, Willey, Knowles, Goughnour, Walker, Vance, and Pliler submit
the following list of Proposed Jury Instructions for use in the trial in this matter.

Dated: October 16, 2007

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DAVID S. CHANEY
Chief Assistant Attorney General

FRANCES T. GRUNDER
Senior Assistant Attorney General

ALVIN GITTISRIBOONGUL
Supervising Deputy Attorney General

/s/ James M. Sobolewski

JAMES M. SOBOLEWSKI
Deputy Attorney General
Attorneys for Defendants

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DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 1

DUTY OF JURY

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you as to the law of the case.

Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.3C

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 2

SECTION 1983 CLAIM - INTRODUCTORY INSTRUCTION

The plaintiff brings his claims under the federal statute, 42 U.S.C. § 1983, which provides that any person or persons who, under color of law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 9.1

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 3

**SECTION 1983 CLAIM AGAINST DEFENDANT IN INDIVIDUAL
CAPACITY- ELEMENTS AND BURDEN OF PROOF**

In order to prevail on his § 1983 claim against the defendants Martel, Willey, Knowles, Goughnour, Walker, Vance, and Pliler, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the defendants acted under color of law; and
2. the acts of the defendants deprived the plaintiff of his particular rights under the United States Constitution as explained in later instructions.

A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation. The parties have stipulated that the defendants acted under color of law.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements he is required to prove under the instructions concerning plaintiff's specific civil rights claims that I will give you momentarily, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendants.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 9.2

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 4

ACTION SOLELY AGAINST DEFENDANTS

This is not an action against the State of California or against the California Department of Corrections and Rehabilitation or any prison of the California Department of Corrections and Rehabilitation.

This is an action against defendants Martel, Willey, Knowles, Goughnour, Walker, Vance, and Pliler.

Whether the State of California would or would not reimburse these defendants is irrelevant and should not be considered.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: *Will v. Michigan Dept. of Social Services*, 491 U.S. 44, 71 (1989).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 5
TWO OR MORE PARTIES - DIFFERENT LEGAL RIGHTS

You should decide the case as to each defendant separately.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.5 (modified)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 6

CAUSATION

In order to establish that the acts of the defendants Martel, Willey, Knowles, Goughnour, Walker, Vance, and Pliler deprived the plaintiff of his particular rights under the United States Constitution as explained in later instructions, the plaintiff must prove by a preponderance of the evidence that the acts were so closely related to the deprivation of the plaintiff's rights as to be the moving force that caused the ultimate injury.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 9.8

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 7

**PARTICULAR RIGHTS—EIGHTH AMENDMENT—PRISONER'S CLAIM
RE CONDITIONS OF CONFINEMENT/MEDICAL CARE**

As previously explained, the plaintiff has the burden to prove that the acts of defendants Martel, Willey, Knowles, Goughnour, Walker, Vance, and Pliler deprived the plaintiff of particular rights under the United States Constitution. In this case, the plaintiff alleges the defendants deprived him of his rights under the Eighth Amendment to the Constitution when they deprived him of outdoor exercise during four lockdowns in 2002 and 2003.

Under the Eighth Amendment, a convicted prisoner has the right to be free from "cruel and unusual punishments." In order to prove the defendants deprived the plaintiff of this Eighth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

1. the plaintiff faced a substantial risk of serious harm because of the deprivation of outdoor exercise;
2. the defendants were deliberately indifferent to the need for outdoor exercise, meaning the defendants knew of that deprivation and disregarded it; and
3. the acts of the defendants caused harm to the plaintiff.

UNITED STATES DISTRICT JUDGE

GIVEN:

GIVEN AS MODIFIED:

REFUSED:

AUTHORITY: Model Civil Jury Instruction 9.25 (modified)
Farmer v. Brennan, 511 U.S. 825, 837 (1994)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 8
PARTICULAR RIGHTS—EIGHTH AMENDMENT—PRISONER'S
CLAIM RE CONDITIONS OF CONFINEMENT

The deprivation of regular outdoor exercise can constitute cruel and unusual punishment in violation of the Eighth Amendment. A prisoner's right to outdoor exercise, however, is not absolute. Such exercise must be provided unless inclement weather, unusual circumstances, or disciplinary needs made that impossible.

In considering whether defendants were deliberately indifferent to the need for outdoor exercise, the jury should consider that defendants had a competing obligation under the Eighth Amendment to ensure the safety of prisoners, including protecting prisoners from each other. In considering these factors, you should give deference to prison officials in the adoption and execution of policies and practices that in their judgment are needed to preserve discipline and to maintain internal security in a prison.

UNITED STATES DISTRICT JUDGE

GIVEN:

GIVEN AS MODIFIED:

REFUSED:

AUTHORITY: *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979);
Haywood v. Procunier, 629 F.2d 599, 603 (9th Cir. 1980);
Hoptowit v. Ray, 682 F.2d 1237, 1259 (9th Cir. 1982);
Allen v. Sakai, 48 F.3d 1082, 1087 (9th Cir. 1994);
Procunier v. Martinez, 416, U.S. 396, 405 (1974);
Bell v. Wolfish, 441 U.S. 520, 547(1979).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 9

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.3

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 10

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the parties have agreed.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.6

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 11

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits are received only for a limited purpose; when I have given a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.7

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 12

EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.8

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 13
DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.9

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 14

RULING ON OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.10

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 15

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.11

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 16

BENCH CONFERENCES AND RECESSES

From time to time during the trial, it became necessary for me to talk with the attorneys out of the hearing of the jury by calling a recess. Please understand that while you were waiting, we were working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we have done what we could to keep the number and length of these conferences to a minimum. I did not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.18

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 17

IMPEACHMENT EVIDENCE—WITNESS

The evidence that a witness [e.g., has been convicted of a crime, lied under oath on a prior occasion, etc.] may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 2.8

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 18

USE OF INTERROGATORIES OF A PARTY

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 2.10

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 19

EXPERT OPINION

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 2.11

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 20

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not received in evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 2.12

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 21

DAMAGES—PROOF

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for the plaintiff on any of the plaintiff's claims, you must determine the plaintiff's damages for that claim. The plaintiff has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused by the defendant.

In determining the measure of damages, you should consider:

The mental, physical or emotional pain and suffering experienced.

It is for you to determine what damages, if any, have been proved.

Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

UNITED STATES DISTRICT JUDGE

GIVEN:

GIVEN AS MODIFIED:

REFUSED:

AUTHORITY: Model Civil Jury Instruction 5.1 and 5.2

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 22

PHYSICAL INJURY REQUIRED – DE MINIMIS INJURY INSUFFICIENT

No federal civil rights action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

Plaintiff must establish a physical injury in order to recover damages for mental or emotional injuries.

A physical injury is an observable or diagnosable medical condition requiring treatment by a medical care professional. It does not include minor injuries which are considered de minimis or trivial.

UNITED STATES DISTRICT JUDGE

GIVEN:

GIVEN AS MODIFIED:

REFUSED:

AUTHORITY: 42 U.S.C § 1997e(e);

McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992);

Hill v. Dekalb Youth Detention Center, 40 F.3d 1176, 1188 (11th Cir. 1994);

Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997);

Luong v. Hatt, 979 F. Supp. 481 (N.D.Tex. 1997);

Spicer v. Collins, 9 F. Supp. 2d 673 (E.D.Tex. 1998)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 23

DAMAGES—MITIGATION

The plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

The defendant has the burden of proving by a preponderance of the evidence:

1. that the plaintiff failed to use reasonable efforts to mitigate damages; and
2. the amount by which damages would have been mitigated.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 5.3

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 24

NOMINAL DAMAGES

The law which applies to this case authorizes an award of nominal damages. If you find for the plaintiff but you find that the plaintiff has failed to prove damages as defined in these instructions, you must award nominal damages. Nominal damages may not exceed one dollar.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 5.6

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 25

PUNITIVE DAMAGES

If you find for the plaintiff, you may, but are not required to, award punitive damages. The purposes of punitive damages are not to compensate a plaintiff, but to punish a defendant and to deter a defendant and others from committing similar acts in the future.

The plaintiff has the burden of proving that punitive damages should be awarded, and the amount, by a preponderance of the evidence. You may award punitive damages only if you find that the defendant's conduct was malicious, oppressive or in reckless disregard of the plaintiff's rights. Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring another. Conduct is in reckless disregard of the plaintiff's rights if, under the circumstances, it reflects complete indifference to the plaintiff's safety or rights, or the defendant acts in the face of a perceived risk that its actions will violate the plaintiff's rights under federal law. An act or omission is oppressive if the person who performs or fails to perform it injures or damages or otherwise violates the rights of the plaintiff with unnecessary harshness or severity, such as by the misuse or abuse of authority or power or by the taking advantage of some weakness or disability or misfortune of the plaintiff.

If you find that punitive damages are appropriate, you must use reason in setting the amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purposes but should not reflect bias, prejudice or sympathy toward any party. In considering punitive damages, you may consider the degree of reprehensibility of the defendant's conduct and the relationship of any award of punitive damages to any actual harm inflicted on the plaintiff.

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DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 26

DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 3.1

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 27

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 1.14 (modified)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 28

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 3.2

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 29

RETURN OF VERDICT

A verdict form has been prepared for you. The verdict form contains 21 questions. The form is divided into four parts with each part addressing a separate lockdown claim made by the Plaintiff. In each part you are asked to find whether or not you find that the defendants against whom that claim is made violated Plaintiff's constitutional rights. If you answer "no" as to each such defendant, then you need not consider the other questions in that part and simply move on to the first questions in the next part. If you answer "yes" as to any defendant against whom a claim is made, then you must complete the questions on compensatory or nominal damages in that part as directed by the verdict form, and also answer the question addressing punitive damages as to each defendant to which you answered "yes."

After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.

UNITED STATES DISTRICT JUDGE

GIVEN:
GIVEN AS MODIFIED:
REFUSED:
AUTHORITY: Model Civil Jury Instruction 3.3

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Gregory Lynn Norwood v. Edward Alameida, Jr., et al.**

No.: **2:03-cv-2554 GEB GGH P**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 16, 2007, I served the attached **DEFENDANTS' PROPOSED JURY INSTRUCTIONS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Gregory Lynn Norwood
J-53407
California Substance Abuse Treatment
Facility
C1-103
P. O. Box 5244
Corcoran, CA 93212
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 16, 2007, at Sacramento, California.

S. Burke

Declarant

/s/ *S. Burke*

Signature